Selected Aspects related to the Enforcement of the Protection of Public Health.

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Abstract— Protecting environment became a fashionable path nowadays, however in practice sometimes the legislation does not reflect quick enough the need of the outer world. The legislation, especially the Czech one, is not making effort regarding the legislation on textiles and garments and separating them from other kinds of waste or material. Nevertheless, in every stage of the life cycle of a textile, textile and its production can represent a danger for environment. And once the environmental harm is detected, it can be difficult to enforce the right to public health.

Keywords— clothes, the Czech Republic, environment, garments, law, legislation, life cycle protection, public health, textile, waste

I. INTRODUCTION

Public health deals with the physical and mental health of the community, particularly in such areas as water supply, waste disposal, air pollution, and food safety. The importance of enforcement of the protection of the public health led us to raise a question, whether its protection covers fully all sectors worth attention when it comes to the health protection and we chose one of them – the fast growing sector of garments and textiles whose existence may put in danger several aspects of public health and in this article we intend to describe not only the enforcement of public health as a whole but more specifically to describe the dangers and possibilities of enforcement of the right to protect public health from the danger steaming from the textile industry.

II. PUBLIC HEALTH AND ITS ENFORCEMENT

The right to the protection of public health goes across various sectors of Czech law. The Charter of Fundamental Rights and Freedoms, i.e. Act No. 2/1993 Coll., refers in Article 11, paragraph 3 Article No. 35, paragraph 3 to the right of every person to a healthy environment and in time information about it. The public health is studied in Act No. 258/2000 Coll., on protection of public health.

As for the enforcement and implementation of the human right to health in a favorable or healthy environment (without risk factors negatively influencing human health and life), the public participation is most important. As the enforcement of this right is relatively complicated it is especially the organized public that has an important role. Public health is a public issue and a matter of public interest. Right to protection of health and life is also the basic human right. The public may therefore use for protection of its rights both public law and private law means of health protection.

By virtue of Article 4 of the Czech Republic Constitution the fundamental rights and freedoms are to be protected under the judicial power. Fundamental rights and freedoms in the perspective of the protection against noise or negative ionizing radiation in the environment are guaranteed and regulated in Articles 31 and 35 of the Charter of Fundamental Rights and Freedoms in relation to health protection and favourable environment. Following in Articles 41 of the Charter of Fundamental Rights and Freedoms, these rights may be claimed only within statutory limits implementing these provisions. The question may be raised whether the examined legal regulation is in compliance with Article 4 of the Czech Republic Constitution, as well as Article 36 of the Charter of Fundamental Rights and Freedoms, which guarantee the protection under the judicial power and being entitled to claim the rights under the prescribed procedure before independent and impartial court or other bodies in specified cases. The legal regime of the Public Health Protection Act as well as the legal regime of the Nuclear Power Act lay down that the only party to administrative procedure is the claimant.

Following the above mentioned considerations it is necessary to assume that the public do not always have the possibility to claim successfully the right for the protection of environmentally healthy living conditions guaranteed by the Constitution in the public procedure that would be in conformity with the law. Public law protection of health in the perspective of the right enforcement is, in certain cases, doubtful.

If the public relies on the direct applicability of the Aarhus Convention, it is necessary to take the case law of the Constitutional Court into account according to which the text of the Convention does not imply that this Convention should be the direct source of any civil rights or obligations, or even the fundamental rights and freedoms.

Therefore, the use of private law means for the right enforcement is proposed, and namely the form of actio negatoria by virtue and within the intention of section 127 of

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1 See: http://medical-dictionary.thefreedictionary.com/public+health

the Civil Code. If thus the nuisance arises from the activities for which the official permission was issued, the protection against the tort of nuisance committed by this activity is not excluded due to the application of the provision of section 127, paragraph 1. Under the conditions laid down within section 417 paragraph 2 of the Civil Code the protection may be claimed even against the immissions as a future threat. In the case of a serious threat, the Civil Code allows the person threatened, within the prevention, to bring a case before court and start proceedings in order that the person who inflicts the threat may be imposed the duty to take appropriate and reasonable measures for preventing the imminent damage. The appropriateness and reasonableness will always depend on the circumstances of a particular case. Next, the action for the protection of personal rights may be used. The right of an individual for the protection of personal rights is regulated by the Civil Code. The success of the action does not require the health impairment of an individual who is exposed to the negative health impact. All tables and figures you insert in your document are only to help you gauge the size of your paper, for the convenience of the referees, and to make it easy for you to distribute preprints.

III. HEALTH, TEXTILE, LIFE CYCLE

Since the fabric is an ubiquitous element of human life, it is an area of risk of exposure to possible danger or damage to public health. Threat or damage to public health in the context of textiles can occur in two ways: either it happens in relation to the life cycle of clothing actively (cultivation, production, import and processing waste) or passively (for clothes).

Those who are in potential danger are at the first place the workers involved in the cultivation of herbs from which textile is made, furthermore those who are exposed to harvesting, bleaching, dyeing, including those people who live near such production points4, secondly, the public health may be threatened or damaged by contact with an already-made textiles using it, so first of all we are talking about the end users who buy clothes and garments in stores.

Public health therefore intersects textiles in several areas of the life cycle (the "LC") clothing. LC textile includes its production (propagation production), preparation (processing, dyeing, manufacturing and transportation, use of the product (wear, use, ironing, washing, drying), to disposal (recycling, repair, landfilling). In each of these individual phases LC clothes may be a potential danger or threat to public health.

At the stage of textile production, public health may be threatened by negative working conditions (working in too noisy, dusty or even toxic environment).

The Doha Declaration held by the World Trade Organization, showed at the beginning of this century the opportunities arising from the TRIPS Agreement in relation to the protection of public health. However, a very important question, i.e. on how to implement these tools into the regulation, the enforceability of these options, seems somewhat unclear, especially in the so-called 'TRIPS Plus' tools within smaller multilateral trade agreements, the existence of which undermine developing countries' access to adequate medical care5.

A „détenue” of for industrialized countries led to negotiations outside the WTO. Developing countries agreed with instruments that should have brought on one hand a rapid economic growth for their countries, but on the other hand the cost of potentially lucrative export markets in key sectors, one of which is currently the textile industry. Protection of public health was however not fully complied with the agreements and even today, the issue of protection of public health in relation to textile and garment industries necessarily interferes with the issue of exports of goods and their price competitiveness of developing countries. In 2003, the European Commission EU strategy on health and the environment, which was introduced in the European Action Plan on Environment and Health 2004-2010, presenting environmental information system and health.

EU - Council Directive 96/61/EC on integrated pollution prevention and control requires Member States to regulate their industrial activities (including textiles) by instruments guaranteed by the integrated operating permits. This integrated approach includes: emissions (air, water, soil), and are also reflected in the spectrum of waste management, resources and act on energetic. A key element of this Directive has become the use of "best available techniques (" best available technologies ", hereinafter" BAT "). The Directive orders the European Commission to organize an exchange of information between Member States and the relevant industry. The results of the exchange of information for each sector are described in the BAT reference documents (called "BREF").

In the production phase, the right environment in the field of public health is based on the EU level, Regulation of the European Parliament and of the Council 1907/2006/EC on the Registration, authorization and restriction of chemicals, establishing a European Chemicals Agency and amending certain laws (the "REACH "). In the Czech Republic, followed by the EU Act No. 350/2011 Coll., On chemicals, chemical mixtures, and amending certain other acts (Chemical Act), Act No. 120/2002 Coll. Conditions for placing of biocidal products and active substances on the market, and amending some related regulations. The main revision of the EU regulation of organic agricultural products (Council Regulation (EEC) No 2092/91), which established a framework for the production, labeling and inspection of organic farm products, was replaced in 2009 by Regulation (EC) No 834/2007. All agricultural products sold in the EU

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4 In India, for instance, public health of workers participating at the textile production is put in danger as well as health of people living karby locations where cultivation and processing of textile is being effectuated – pesticides, biocides, colorants and other chemicals leaching to the soil and water.

5 In: Kerry V.B.& Lee, K., TRIPS, the Doha declaration and paragraph 6 decision: what are the remaining steps for protecting access to medicines'? See: http://www.globalizationandhealth.com/content/3/1/3
having the name of the term "organic" must meet certain minimum criteria. Generally they are defined by the EU Regulation (2002/91) and include specific procedures, maintaining soil fertility and control of pesticides, use fertilizers, pesticides, animal feed, detergents and disinfectants, the use of seeds produced by organic methods, elimination of the use of genetically modified organisms, although tolerated their limited quantity (motion governed by EC Regulation 1946/2003 on over border movements of genetically modified organisms). Regulation no. 834/2007 brought new modifications that simplified the process for farmers and consumers. Key changes occurred in greater control of the import, an order for compulsory use of the EU organic logo, the introduction of the obligation to indicate the place of manufacture of the organic product of the product information to customers and the general setting a limit of 0.9% of the random presence of GMOs in organic products.

In the stage of dyeing and bleaching in connection with the protection of public health in the textile, several changes were established. In particular, certain types of dyes had a significant presence in textile manufacturing, however the risk of carcinogenic features of those compounds it was decided to eliminate them. 2002/61/EC Directive regulating 76/769/EEC, limited dyes (called azocolourants.), which might present a potential risk of carcinogenicity (amines).


Preparing the clothes for the customer means manufacturing, dyeing and textile transportation to the place of purchase. Textiles, imported into Europe, largely in Asia, are usually transported on the ship and the port used by the train, but especially truck traffic. Trucks operate as so-called "mobile stores" saving storage space and corresponds with the trend of "fast fashion" when trying to apparel manufacturers and four times per year to supply the market with new models and encourage their customers to buy as much as possible6.

Garments must be cut, sewn and wrapped. European Commission adopted Regulation on classification, labeling and packaging of substances and mixtures and Directive 67/548/EEC and Regulation (EC) No. 1907/2006 *(COM (2007) 355, which combined the ideas of the UN and the EU regarding the packaging strategy. In the Czech Republic, this area is regulated by the Act No. 477/2001Sb., on packaging. An Act no. č.201/2012 Coll. On atmosphere, has been regulativ the sphere of emissions and pollution and the law dealing with permits to emissions of carbon dioxide is regulated by the act on emissions permits7.

The stage of the use of the product, especially for cotton fabrics, ie washing, drying, ironing, is one of the most important areas as to the protection of the environment (in terms of EDIP methodology, it is precisely this phase of LC with cotton that seems to be one of the greatest burdens in terms of CO2 emissions )8.

As far as getting rid of textiles in relation to public health is concerned, we are mainly interested in the question whether the textile waste treated and stored so as to not harm or endanger public health. This can be achieved either by transformation (modification, repairing of textiles), which is one way of recycling clothes (which occurs in developed countries less and less), or by recycling the textile material, until achieving the stage, then there is waste disposal at the landfill or burning stage. Waste issues are generally covered by the Act No. 185/2001 Coll., On waste, accompanied by decrees of the Ministry of Environment and the Ministry of Health, among them in particular Decree č.376/2001 Coll. On Evaluation of Hazardous Properties of Waste, as amended by Decree No. 502/2004 Coll.

IV. ENFORCEMENT TOOLS OF THE PUBLIC HEALTH PROTECTION

The protection of human rights is also closely connected with the enforcement of compensation in respect of the health impairment caused by negative environmental impact. In the textile sector as well as in other areas of protection of the environment, which includes public health and its protection it is worth noting that prevention is cheaper and more desirable than recovery of damage. As to the restoration to its original state, the Czech legislation lacks any precise specification of what stands for the term "original state".

However, sometimes restoring into the original state is so expensive or ineffective that it seems reasonable to use rather the same procedure as in the Act No. 114/1992 Coll., on nature and landscape, which states in §86 paragraph 2 that if not possible and rational to introduce damage to the original state can (in the case of nature conservation and landscape) a nature conservation authority may impose to the mandatory person to carry out reasonable alternative remedial measures to restore the damaged state.

The "polluter pays" principle can be related to damage or threat of the public health in relation to textiles so that those who contributed significantly to the damage or threat to public health shall participate relatively to the injury that the victim suffered. One of the most powerful tools of public health are economic instruments, mainly fees for pollution/environmental damage to the public health, which happen to be thus the first sanction and regulatory means aiming to reduce the quantity of threats to public health. Furthermore,

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6 Hralova E. et al., Víš, co nosíš? Studie o environmentálních aspekttech odivání, p. 16.
8 Hralova E. et. col., Víš, co nosíš? Studie o environmentálních aspekttech odivání, p. 29.
fees for the use of resources, taxes, tax relief and benefits serve also as another possibility of a tax advantage the entities that support environmentally friendly practices in any of the LC textiles, which then have a positive effect on reducing the threat or damage to public health. Emission allowances are also worth mentioning. The main aim of the legal account of the public health protection in relation to textiles shall be the legislative support encouraging people in sorting waste, purchasing recyclable or already recycled textiles, purchasing garments and textiles which were made using reduced quantities of substances harmful to human health (organic textiles), respectively, or buying textiles with reduced pollutants for public health.

Threat to public health or damage may occur during LC that may happen because of the soil contamination with pesticides during its cultivation, release of hazardous substances, resulting in the production of synthetic clothing, water or air, the reaction of the human body while wearing a contact person with textiles and threats or damage to public health, which may occur in connection with poor waste management. These areas correspond to those that the experts consider to be most harmful to human health, namely: incorrect handling of chemicals, pesticides, proper management of water resources and soil. Noise, vibration and air quality gets in the context of the textile only at the secondary level - assuming that the manufacture of textiles results in damage or thread of their health by vibration or poor air quality. During the production of synthetic clothing hazardous substances that may endanger or damage the environment and threaten human health can be produced, they can then leak in water or soil, or air. The difficulty of the law enforcement problem is that if the polluter is substantial, he can emit significant quantities of emissions into the air, because even though it is the duty of the administrative bodies of the Act to determine allowable pollution limits with regard to the situation in the locality, the proving is very difficult. The right to the protection of public health can then be enforced by the note for the initiation of the examination of such integrated permits.

V. PROVING OF THE DAMAGE / DANGER OF THE PUBLIC HEALTH

We consider the possibility of enforcement of right in relation with the environmental law regarding the Czech legal system as a complicated and lengthy. Czech Commercial Code deals in § 44 paragraph 2 point. i) with the question of "endangering the health of consumers and the environment." Differing definitions of "average consumer", which refer to the right under the EU Unfair Commercial Practices Directive (transposed by the change of the Consumer Protection Act). In case of damage to public health, the victims (both physical and legal entities, including municipalities) may appeal against the suffered damage to public health, (see judgment of the Constitutional Court dated 19.12.2000) 10.

The enforcement of damages for the health impairments caused by negative environmental factors is very disputable under the conditions of the legal regulation in our country. The causal nexus between the negative environmental impact and a particular health impairment is very difficult to prove. The human right for the protection of health against risk factors, or negative environmental impact, is enforceable in a comparatively limited sphere of cases. Some of the abovementioned aspects of the questionable enforceability of the human right for the protection of health can be compared to the legal regulations in other countries 11.

A clear dividing line can be seen between civil law jurisdictions, requiring a very high degree of certainty (relating to the proximity cause between the activities of a polluter and a health impairment), and common law jurisdictions, where this degree is much lower. In the United Kingdom e.g. the claimant should prove at least that the acts of the defendant substantially contributed to the damage caused (health impairment). Proving the causal nexus requires just a mere probability and foreseeability of the health impairment 12.

The above mentioned outline of the legal regulations in other countries may result in the conclusion that, in the perspective of the legal certainty relating to the enforceability of the claim for the protection of health as well as the claim for the damage already caused in respect of health impairment, some legal regulations especially in common law jurisdictions include inspiring legal instruments which simplify the procedure of proving the liability of the polluter. It is especially the institute of „damage foreseeability“ and the position of the causal nexus referring to mere „probable connections“ between the acts of the polluter and the health impairment which might be an inspiration de lege ferenda even under the conditions in our country and an instrument for strengthening the human right for the protection of health or the right of the injured ones to compensation for the harm.

In respect of the fact that the human right for the protection of healthy living conditions will be interpreted ad hoc in the connection with the interpretation of other human rights because it is not independently guaranteed, it may be concluded that although the issues concerned are not adequately regulated in many aspects in our country, it does not mean that the violation of human rights occurs. The legal regulation for the protection of public health against the environmental risk factors (or the protection of healthy living conditions), based on the democratic principles and the protection of human rights, has been newly developing under the conditions of the Czech Republic. It is therefore quite understandable that unlike the examined legal regulations in the countries which have been concerned with these issues for a long time, the legal regulation in our country has some imperfections. Even the countries with long traditions in this area fail to accept some legal instruments without reservations.

9 In: Damohorský, M., Právo životního prostředí, p. 532.
11 See: Freeman, N., A prospective health impact assessment of the Merseyside integrated transport strategy (MERITS), pp. 6 – 12.
Enforceability of liability

The enforceability of liability for threatening or harming the human health is often a cause of long-term adverse effects on human health, the consequences of which come up in a few years, therefore the detection of such damage faces the problem of proving polluters that it was his specific influence that caused violation of public health. Proving causation seems to be very complicated as far as the law enforcement of the public health protection is concerned. Equally, to calculate exactly the extent of the polluter’s contribution to the injury to the victim on his/her health is highly complicated, i.e. how to precisely the extent of damage to human health caused by the polluter, as well as the calculation of a possible compensation. The Czech Republic is just beginning of its way regarding possibilities compared with some other EU countries that have already transposed into their national regulations possibilities of demonstrating the defendant's culpability by the mere demonstration of "expecting damage" or "probable causation." Instead of causation as we know, the court should find as a proof even the probable causation of harm to the public health, which would significantly contributed to a better enforcement of the law. The institute of “foreseeability of damage” and putting the causal nexus as merely a “probable link” between the acts of the polluter and a health injury that may be an important instrument for strengthening the human right to protection of life and health, or for strengthening rights to health injury compensation. In this respect the given regulation will have a counterpart in the Czech Republic in the new Civil Code effective as from January 1, 2014. However, regarding the ambiguity of some newly introduced concepts it is the manner of application and interpretation of respective provisions that will be decisive.

VI. CONCLUSION

The sector of public health is a key area of healthy and happy lives of people. Its protection thus shall be a priority from the human perspective. However, the difficulties of proving a causal nexus between the threat or damage to public health and the polluter are so precarious that it seems, especially in the Czech conditions of law that the regulation should adopt a rule considering even a probable cause of harming or damaging as relevant and sufficient to impose the polluter accepting his liability for the damage or endangering of the public health.

The legislation in the Czech Republic regulates the liability in the sector of the environmental law in terms of limits and pollution, but does not encourage the use of used and eco-friendly handling with textile and garments. The motivation of both consumers and producers for choosing the way of the environmentally friendly behavior towards textiles and supporting technologies, manufacturers and products that do neither jeopardize nor threaten public health emphasizes a big accent on awareness and motivation of consumers and thus appears to be very difficult.

We find that the area of textiles, exploitation and production of clothing and garments affects public health so that it is, in our opinion, this fact must be taken into account in the legislation of the Czech Republic, mainly through economic instruments of the environmental law - to motivate clothing manufacturer to strictly keep the health conditions of workers, the protection of public health from contamination of water and soil chemicals of the textile production, end consumers of textiles and clothing to the eco-friendly use of clothes, to a greater collection of used textiles, to repair and modify textiles instead of getting rid of him, the more consistent grading textile waste. As a means of a greater protection of public health in relation to textiles appears to increase fees for mixed waste, increase of the efficiency of control of personal protective equipment employees of the textile producer.

REFERENCES


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